

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL D MILAM,

Plaintiff,

v.

SHAWN NOBLE, BRENT HYER, ANDY
HALL, JEREMY JAMES, PIERCE
COUNTY,

Defendants.

CASE NO. C14-5828 BHS-JRC

ORDER TO SHOW CAUSE

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR1, MJR3 and MJR4.

The Court has granted plaintiff in forma pauperis status and is reviewing the complaint as required by 28 U.S.C. § 1915A. Plaintiff is an inmate currently incarcerated at the Monroe Correctional Complex. Plaintiff alleges that Lakewood police officer Shawn Noble violated his right to privacy during a search and that the Pierce County prosecutor used illegally obtained

1 evidence in a criminal trial (Dkt. 1-1, proposed complaint). Plaintiff does not inform the Court if
2 he was convicted of an offense or if this offense is the reason he is currently incarcerated.

3 The Court needs to know if plaintiff is incarcerated because of the criminal trial he
4 mentions in his complaint. The Court needs this information to determine if the complaint can be
5 served or if plaintiff is precluded from proceeding because his action would call into question the
6 propriety of his conviction. If a plaintiff is challenging the very fact or duration of physical
7 imprisonment, and the relief sought will determine whether plaintiff is or was entitled to
8 immediate release or a speedier release from that imprisonment, plaintiff's sole federal remedy is
9 a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

10 The United States Supreme Court held that "[e]ven a prisoner who has fully exhausted
11 available state remedies has no cause of action under § 1983 unless and until the conviction or
12 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas
13 corpus." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The Court added:

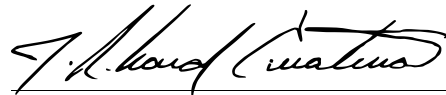
14 Under our analysis the statute of limitations poses no difficulty while the state
15 challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A]
16 § 1983 cause of action for damages attributable to an unconstitutional conviction
or sentence does not accrue until the conviction or sentence has been invalidated.

17 *Id.* at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be
18 made based upon whether 'the nature of the challenge to the procedures [is] such as necessarily
19 to imply the invalidity of the judgment.' *Id.* If the court concludes that the challenge would
20 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge
21 must be brought as a petition for a writ of habeas corpus, not under § 1983." *Butterfield v. Bail*,
120 F.3d 1023, 1024 (9th Cir. 1997) (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)).

22 The Court orders plaintiff to show cause why the Court should not recommend that this
23 action be dismissed for failure to state a claim. As part of his response plaintiff must inform the
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1 Court if he was convicted as a result of the actions and facts he set forth in his complaint.
2 Plaintiff's response to this order must be filed on or before December 5, 2014, or the Court will
3 recommend that the action be dismissed.

4 Dated this 29th day of October, 2014.

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7 J. Richard Creatura
8 United States Magistrate Judge
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